

### **DETAILED ACTION**

Applicant's request for reconsideration of the finality of the last Office Action is persuasive and, therefore, the action dated 1/28/08 is vacated. A new Office Action is issued as follows.

#### ***Claim Objections***

Claim 5, 6, 18 are objected to because of the following informalities:

With regards to claim 5: The limitations "the anchor" and "the form tie receptacle" lack proper antecedent basis as a plurality has been previously recited. Examiner suggests replacing "the anchor" with -- each anchor --. In addition, Examiner suggests replacing "the form tie receptacle." with -- each corresponding form tie receptacle. --

With regards to claim 6: The limitation "the form tie receptacle" in lines 1-2 of the claim lacks proper antecedent basis as a plurality has been previously recited. Examiner suggests replacing "the form tie" with -- each form tie --.

The limitation "the anchor" in line 2 of the claim lacks proper antecedent basis as a plurality has been previously recited. Examiner suggest replacing "the anchor" with -- each corresponding anchor --

With regards to claim 18: The limitation "plurality of longitudinal studs as in claim 1" in line 2 of the claim is improper, as claim 1 recites a single longitudinal stud.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 9, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim (US 5,611,183).

With regards to claim 1: Kim discloses a longitudinal stud (30) capable of use with a concrete wall for supporting retaining curable foam insulation adjacent the concrete wall. The stud (30) comprises a longitudinal member having a length dimension greater than a width and depth dimension (figs. 2 & 9), the longitudinal member (30) including:

- a longitudinal first surface (A) ( fig. 9) capable of abutting against a concrete wall;
- an anchoring system (37, 41) ( figs. 7 & 9; col. 6, lines 20-28) capable of anchoring the first surface to at least two form ties protruding from the concrete wall; and
- a lateral web (31, 34) extending from the first surface (A) (fig. 9) capable of receiving and retaining curable insulation adjacent to the concrete wall wherein the lateral web allows for fluid communication of the communication of the curable foam insulation between opposite sides of the lateral web to create a substantially continuous layer of insulation through the lateral web.

Art Unit: 3600

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

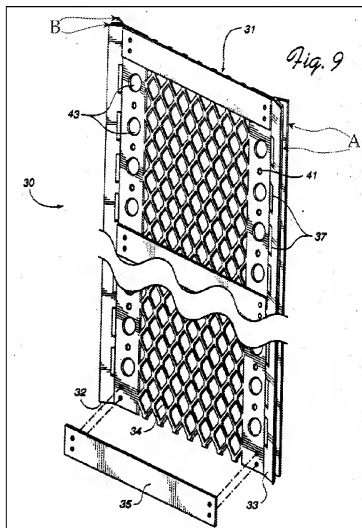


Fig. 9: (US 5,611,183)

With regards to claim 2: Kim further discloses a second surface (B) disposed on the lateral web (31, 34) opposite to the first surface (A) capable of supporting finishing treatment.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 4: Kim further discloses the anchoring system (37, 41) includes at least two corresponding form tie receptacles (37) and corresponding anchors (fastener) (col. 6, lines 20-28) capable of engaging a hole in the form tie.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 6: Kim further discloses a form tie receptacle (37) includes an opening (41) (figs. 2 & 9; col. 6, lines 24-29), which is capable of alignment with the hole in the form tie. Kim further discloses an anchor (fastener) capable of being placed through the opening (41) and through the hole when aligned to anchor the stud to the form tie (col. 6, lines 24-29).

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 9: Kim further discloses the stud (30) is a molded plastic stud (col. 7, lines 50-53).

With regards to claim 18: Kim discloses kit capable finishing a surface of a concrete wall, the kit comprising a plurality of longitudinal studs (30) (fig. 1) comprising a longitudinal member having a length dimension greater than a width and depth dimension (fig. 9), the longitudinal member (30) including:

- a longitudinal first surface (A) ( fig. 9) capable of abutting against a concrete wall;
- an anchoring system (37, 41) ( figs. 7 & 9; col. 6, lines 20-28) capable of anchoring the first surface to at least two form ties protruding from the concrete wall; and
- a lateral web (31, 34) extending from the first surface (A) (fig. 9) capable of receiving and retaining curable insulation adjacent to the concrete wall wherein the lateral web allows for fluid communication of the communication of the curable foam insulation between opposite sides of the lateral web to create a substantially continuous layer of insulation through the lateral web.

Kim further discloses a plurality of anchors (fasteners) (col. 6. lines 20-28) capable of anchoring the longitudinal studs to the form ties.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 1-3 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hull (US 2,276,040)

With regards to claim 1: Hull discloses a longitudinal stud (M) (fig. 4) capable of use with a concrete wall for supporting retaining curable foam insulation adjacent the concrete wall. The stud (M) comprising a longitudinal member having a length dimension greater than a width and depth dimension (fig. 3), the longitudinal member (M) including:

- a longitudinal first surface (N) (fig. 3) capable of abutting against a concrete wall;
- an anchoring system (12, slot) ( fig. 3; col. 1, lines 54 – col. 2, line 2) capable of anchoring the first surface to at least two form ties protruding from the concrete wall. It is noted that slot of Hull is capable of anchoring form ties similar in width to the slots by frictional means.
- a lateral web (20) extending from the first surface (34, 36) (fig. 1) capable of receiving and retaining curable insulation adjacent to the concrete wall wherein the lateral web allows for fluid communication of the curable foam insulation between opposite sides of the lateral web to create a substantially continuous layer of insulation through the lateral web.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

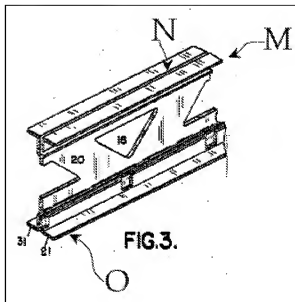


Fig. 3: Hull (US 2,276,040)

With regards to claim 2: Hull further discloses a second surface (O) disposed on the lateral web (20) opposite to the first surface (N), which is capable of supporting a finishing treatment.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 3: Hull further discloses the lateral web (20) extends between the first and second surfaces (N, O) at right angles thereto (figs. 3 & 4).

With regards to claim 7: Hull further discloses the first surface (N) comprises first and second flanges extending outwardly from the web (20) (figs. 3 & 4).

With regards to claim 8: The first and second flanges will inherently have holes as Hull discloses the flanges secured/fixed by nails (C, C<sup>1</sup>) (figs. 5)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (US 5,611,183) in view of Silverman (US 6,243,999).

With regards to claim 19: Albers discloses everything previously mentioned, but fails to disclose an opening trim member capable of operative engagement with a concrete wall adjacent an opening, the trim member including an abutting surface for abutting an opening in a concrete wall, an extension member extending angularly from the abutting surface a second extension member for supporting attachment of a finishing surface.

However, Silverman discloses an opening trim member (20) capable operative engagement with a wall adjacent an opening, the trim member (20) including an abutting surface for abutting an opening in a wall, an extension member extending angularly from the abutting surface a second extension member (24) (figures 2-4).

It would have been obvious to one of ordinary skill in the art at the time of the invention was to made to modify the kit of Kim to employ a portal and portal trim within



the building structure as taught by Silverman so as to provide a support for a finishing surface.

The trim member of Silverman is capable of supporting attachment of finishing surface and supporting curable foam insulation adjacent the opening.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (US 5,611,183) in view of Koenig, Jr. (US 5,477,643).

With regards to claim 20: Kim discloses everything previously mentioned, but fails to disclose a corner stud capable of attachment to a wall corner, the stud include a first and second wall contacting surface and first and second web surfaces extending outwardly from the first and second wall contacting surfaces, the first and second web surface interconnected by a hinge.

However, Koenig, Jr. discloses a corner stud (10) for attachment to a wall corner (fig.4), the stud (10) including a first and second wall contacting surface (12) and first and second web surfaces (60) extending outwardly from the first and second wall contacting surfaces (12), the first and second web surface (60) interconnected by a flexible hinge (14) (col. 2, lines 57-60; fig. 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the kit of Kim to include corner stud for attachment to a wall corner, the stud include a first and second wall contacting surface and first and second web surfaces extending outwardly from the first and second wall contacting surfaces, the first and second web surface interconnected by a hinge as taught by Koenig, Jr. in order to provide support for a finishing surface along a corner that has an angle less than or greater than 90 degrees.

#### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

The rejection of claim 5, 8, and 20 under 35 USC 112 second paragraph has been withdrawn in view of the amendment filed 11/06/07.

#### ***Allowable Subject Matter***

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following prior art is directed to longitudinal structural members

Doke (US 3,394,507); De Fonw et al. (US 4,197,952); Kim (US 5,459,970);  
Romes et al. (US 3, 083,794); Stovall, Jr.(US 7,104,018).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSIE FONSECA whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571)272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./  
Examiner, Art Unit 3633

/Robert J Canfield/  
Supervisory Patent Examiner, Art Unit 3635

